

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JULY JUSTINE SHELBY,

Plaintiff,

v.

PETREUCCI et al.,

Defendants.

23-CV-4315 (KMK)

ORDER

KENNETH M. KARAS, United States District Judge:

Plaintiff, who is currently incarcerated at Federal Medical Center Carswell, brings this pro se Action, alleging that her federally protected rights were violated during her incarceration at F.C.I. Otisville, in Orange County, New York, and the Metropolitan Detention Center (“MDC”), in Brooklyn, New York. (Amended Comp. (Dkt. No. 9).) By order dated July 12, 2023, the Court granted Plaintiff’s request to proceed in forma pauperis (“IFP”), that is, without prepayment of fees. (Dkt No. 16.)¹

To allow Plaintiff, who is proceeding IFP, to effect service on Defendant through the U.S. Marshals Service, this Court, on July 24, 2023, issued an Order of Service, requesting the Clerk of Court to fill out a U.S. Marshals Service Process Receipt and Return forms (“USM-285 forms”) for Defendants: (1) Otisville Warden Petrucci; (2) Otisville Warden W.S. Pliler; (3) Otisville Medical Director Dr. A. Linley; (4) Otisville Health Services Administrator Mr. Walls; (5) Otisville Officer Hannah; (6) Otisville Officer Z. Hurn; (7) Otisville Officer Christiansen; (8) MDC Brooklyn Warden Washington; and (9) Dr. Alex McLearen, Federal Bureau of Prisons, Director, Womens Offender Bureau, Chair, Transgender Executive Counsel. (Dkt. No. 18.)

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

The U.S. Marshal's Service attempted service on each of the Defendants, but successfully executed service only as to Defendants B. Walls, Alphonse Linley, Warden Washington, and Alex McLearen. (*See* Dkt. Nos. 29–33.) Service was unexecuted as to the remaining Defendants due to either insufficient addresses, transfers to different Federal Bureau of Prisons (“BOP”) facilities, or retirements from the BOP. (*See* Dkt. Nos. 21–28.)

DISCUSSION

Under *Valentin v. Dinkins*, a pro se litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit the BOP to identify the five Defendants, against whom service was not executed. This includes Otisville Warden Petrucci, Otisville Warden W.S. Pliler, Otisville Officer Hannah, Otisville Officer Z. Hurn, Otisville Officer Christiansen. It is therefore ordered that the BOP must ascertain the identities of these five Defendants whom Plaintiff seeks to sue here and the addresses where the Defendants may be served. The BOP must provide this information to Plaintiff and the Court within thirty days of the date of this order.

Within thirty days of receiving this information, Plaintiff must file an amended complaint with the full names of the five Defendants. The amended complaint will replace, not supplement, the original complaint. An amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order directing the Clerk of Court to complete the USM-285 forms with the addresses for the named defendants and deliver all documents necessary to effect service to the U.S. Marshals Service.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Counsel for the BOP: Dana Walsh Kumar, DOJ-USAO SDNY, 86 Chambers Street, Ste Floor 3, New York, NY 10007.

SO ORDERED.

Dated: October 11, 2023
White Plains, New York

A handwritten signature in black ink, appearing to read 'KMK', is positioned above a horizontal line.

KENNETH M. KARAS
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

-against-

____ CV ____
(Include case number if one has been assigned)

**AMENDED
COMPLAINT**
(Prisoner)

Do you want a jury trial?

☐ Yes ☐ No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a “*Bivens*” action (against federal defendants).

☐ Violation of my federal constitutional rights

☐ Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name	Middle Initial	Last Name
------------	----------------	-----------

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency’s custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City	State	Zip Code
--------------	-------	----------

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☐ Convicted and sentenced prisoner

☐ Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated	Plaintiff's Signature
First Name	Middle Initial
	Last Name
Prison Address	
County, City	State
	Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: _____